

Villescas
MG 00327

GENERAL INFORMATION:

This case is set for hearing on Petition for Appointment of Guardian, person only,
by stepfather, minors 17 and 13

Continued from 1-5-04.

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE
NOTED:

1. Objections withdrawn and temporary letters issued to Gil Garcia.
2. Still need to file Notice of Hearing and Proof of Service. Court could consider anyone who has appeared as having notice.
3. Prior probate notes in error regarding need to serve Department of Children's Services and the need of Mr. Garcia to file as a professional guardian. As a stepfather, the Probate Code considers him to be a "relative".
4. Complete the Guardian Screening Form.
5. Department of Children's Services did positive report. (See Confidential Envelope)
6. Both parents are deceased.

RECOMMENDATION:

RFA subject to notice and completing the screening form.

Fields
MG 00352

GENERAL INFORMATION:

This case is set for hearing on Petition for Guardianship, by non-relative, person only, minor 14 years

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Temporary letters issued 2-09-04.
2. Need to file Notice of Hearing and Proof of Service on Department of Children's Services, as the proposed guardian is not related.
3. Mother has signed waiver and consent.
4. Court to review Confidential Guardianship Screening Form.
5. Child may have records with CPS.

RECOMMENDATION:

Need report from DCS.

Fowler
MG 00353

GENERAL INFORMATION:

This case is set for hearing on Petition for Guardianship, person only, by brother, minor 15 ½

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE
NOTED:

1. Temporary letters issued on 2-11-04.
2. Declaration filed regarding lack of knowledge of father.
3. Need to file Notice of Hearing and Proof of Service on all grandparents, plus all siblings over the age of 12. Also need notice to Court Investigator.
4. Need personal service on the mother.

RECOMMENDATION:

RFA subject to notice.

McLeod Trust
MPR 00843

GENERAL INFORMATION:

This case is set for hearing on Petition for Instructions to Reimburse Attorney's Fees

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Petitioner is the former trustee who was removed. He is seeking fees for the filing of his accounting and also for the contest to the successor's trustee's accounting.
2. Successor Trustee was surcharged almost \$85,000. Now a non-family member is the trustee.
3. Fees for own accounting (\$9551.25):
 - a. a trustee is not entitled to fees and expenses of litigation when the trustee breached a trust. *Estate of Gump* (1991) 1 Cal.App.4th 582, 605.
 - b. but court did approve the accounting, which means that there was no finding of bad faith in the accounting. (See *Gump, supra* at 607.)

- c. The trial court exercises its equitable powers in determining whether trustee misconduct or breach of trust warrants reduction or denial of attorney fees. (*Id.* at 610.)
- 4. Petition seeking fees for objecting to successor trustee's accounting. (\$9,009.25) PC 17211 provides for fees when a beneficiary contests the trustee's accounting and the court determines that the trustee's opposition to the contest was without reasonable cause and in bad faith. The amount awarded shall be charged against the compensation or other interest of the trustee in the trust. The trustee shall be personally liable and on the bond, if any, for any amount that remains unsatisfied.
- 5. To award fees for the contest, court would have to rule that the successor trustee's opposition was without reasonable cause and in bad faith. The bare fact of surcharge is not enough. Petition presents no argument on this point.
- 6. Petition also seeking additional fees of almost \$2000 (seems to be on a round number theory) for additional billings regarding how the trustee should finalize his duties to the trust.
- 7. No oppositions filed yet.

RECOMMENDATION:
Judge's discretion.

Laymon
MPR 00902

GENERAL INFORMATION:

This case is set for hearing on OSC re: Review

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Last status was report 1-9-03 attaching letter from April 2002 regarding trial date in June 2003. No report as to whether trial went forward or current status filed recently.

RECOMMENDATION:

Need current status. If case in Texas is finalized with gain to estate, then need to file Inventory & Appraisal for 9-20-04 and accounting and/or status report for 2-28-05. If lawsuit yielded nothing, then the petitioner can file affidavit regarding "no assets" to close the estate. If lawsuit still pending, then need to set another OSC hearing.

Speakman
MPR 00986

GENERAL INFORMATION:

This case is set for hearing on Filing of Receipts and Final Discharge.

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE
NOTED:

1. Receipts filed.

RECOMMENDATION:

May issue order for discharge and hearing may go off-calendar.

McGuire
MPR 01071

GENERAL INFORMATION:

This case is set for hearing on OSC re: Further Sanctions and Accounting Review

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Continued from 11-24-03 and 1-5-04. Attorney no appearance. Sanctioned \$150, and then \$300 on 1-5-04. Ordered to be present.
2. Filed a "Partial" Inventory & Appraisal, but it is incomplete. Needs to indicate whether the Property Tax Certificate Requirement has been satisfied. STILL NOT CORRECTED.
3. Then filed a "Final" which doesn't mention anything from the prior Inventory & Appraisal, but only includes some stocks. Need to attach copy of investment statements per local rule. STILL NOT CORRECTED.
4. Attorney filed declaration regarding his filings and requests that sanctions be refunded (Paid). The sanctions were imposed not because no documents were filed but because the documents were not filed correctly.
5. **Also, accounting has not yet been filed.**

RECOMMENDATION:

Need accounting and corrections to the I & A.

DeRoche
MPR 01173

GENERAL INFORMATION:

This case is set for hearing on Petition for Probate, Letters Testamentary with full authority

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Appears that original will has now been lodged.
2. Only issue remaining is question of bond. Will waives bond, but court has discretion to order one in this case due to the non-resident status of executor. PC 8571. If bond requested, suggest \$42,000.
3. Declaration filed supporting no bond, but not clear if this represents all beneficiaries under the will.

RECOMMENDATION:

RFA subject to court's discretion on bond. Need to set hearing for filing of Inventory & Appraisal for 9-20-04. Set hearing for accounting and/or status review for 5-2-05. Accountings to be filed 30 days in advance. Note local rule regarding the filing of bank statements.

Bunten
MPR 01176

GENERAL INFORMATION:

This case is set for hearing on Petition for Probate of Will and Letters
Testamentary

Continued from 1-5-04 for correction of notes.

1. Was original will filed?
2. Will waived bond, but under PC8571, court has discretion to require a bond since the proposed personal representative is a nonresident of the State of California. Bond would be for \$68,000.
3. Proposed Order and Letters asks for full authority under IAEA. The Petition does not ask for this authority, and the published notice did not ask for it. Therefore, the court cannot order it.

RECOMMENDATION:

RFA subject to ruling on 2. Once approved, set hearing for filing of Inventory & Appraisal for 9-20-04. Set hearing for status report and/or accounting for 5-02-05. Accountings to be filed 30 days in advance. Note local rules regarding filing of bank statements.

Scott
MPR 01194

GENERAL INFORMATION:

This case is set for hearing on Petition to Determine Succession

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE
NOTED:

1. No attachment 6b regarding the personal representative's consent to use this proceeding. Was an estate opened? It appears that petitioner would also be the executor, so he would given his own consent.
2. Local venue issue. Property is located in Lucerne Valley, but Certificate of Assignment from petitioner indicates wish to have the matter heard in Joshua Tree District. Since the County is proper, JTD to keep the matter here and sign order.

RECOMMENDATION:

RFA

No proposed order submitted.

Grindle
MPR 01196

GENERAL INFORMATION:

This case is set for hearing on Petition to Determine Succession

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE
NOTED:

None

RECOMMENDATION:

RFA

McRae
MPR 00008

GENERAL INFORMATION:

This case is set for hearing on Status Review/Filing of Inventory & Appraisal

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Case continued from 12-29-03. Court ordered I & A to be filed within 20 court days. Not filed yet.
2. Did file a Status Report prior to the last hearing indicating real property sale was almost finalized. What is the current status?

RECOMMENDATION:

Need to get I & A and current status report. Court could still suspend powers if no appearance or no action.